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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000361

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SUBJECT: UKRAINE: CONSTITUTIONAL REFORM FROM THE  
PRESIDENT'S TEAM

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Classified By: Political Counselor Kent Logsdon for reasons 1.4(b,d).

11. (C) Summary. Deputy Head of the Presidential Secretariat Stavnichuk and Justice Minister Onishchuk confirmed to us recently that the President's team is moving ahead with its plans to amend the constitution in the first half of the year. Stavnichuk described the National Constitutional Council (NCC), which Yushchenko established in December (reftel), as containing representatives of all political forces and of civil society, but underscored it is the President's right and prerogative to lay out the Council's agenda. She also confirmed that the Secretariat already has a draft that it plans to use as a working paper for the Council's first meeting and she would not rule out that there could be a final document ready for a referendum in June. Justice Minister Onishchuk, another key member of the President's constitutional reform team, told the Ambassador that he expected 65-70 percent of the old constitution to be rewritten in the new draft. He thought that the Rada should approve the new constitution before it is put to referendum and said he would try to convince Yushchenko of this.

12. (C) Comment. Although the presidential team is clearly hard at work, it seems to be having some difficulties in getting the NCC off the ground. Stavnichuk told us that the first NCC meeting would be held in mid-February, but they are already a week late in announcing the composition of the Council. One reason for the delay may be problems in identifying the members -- 230 nominations were received and the Secretariat was targeting 100 members, but the most recent rumors suggest that now all NGO representatives have been removed, dropping the number to 60. If the President's process is to be seen as credible, the President's team will have to be careful that the NCC really does represent all views. End summary and comment.

Presidential Secretariat Readying New Constitution  
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13. (C) Marina Stavnichuk, the deputy head of the Presidential Secretariat tasked with running the NCC, told us January 31

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that they hoped to have the Council up and running by mid-February. At the first meeting, Yushchenko will present his vision for constitutional reform and lay out the tasks for the NCC. Of course, Stavnichuk added, there must be consensus in order to avoid the crises that occur today -- there will be plenty of discussions with professionals and with society.

14. (C) According to Stavnichuk, Yushchenko will use his constitutional right to send the constitution to the Rada, but the question remains how do you write a new constitution,

since the current document only addresses amendments. One path would be the same -- approving the new document in two separate Rada sessions (the Rada has two sessions per year), but the other option is approving the new draft of the constitution via a national referendum. An October 2005 Constitutional Court decision validated referendum as a valid choice.

15. (C) In terms of the composition of the NCC, Stavnichuk said there would be representatives of all political parties and of civil society. She confirmed that the Secretariat had received more than 230 nominations, but the final total would be fewer than 100 members. (Note. Members of the Civic Constitutional Committee (CCC), a group of NGOs and think tankers, told us on February 12 that there were rumors that the NCC was actually down to 60 people and all NGOs had been removed from the list, with the possible exception of respected human rights activist Yevhen Zakharov. End note.) Those not selected to serve on the NCC, will be asked to take part in roundtables along the way. Stavnichuk was somewhat dismissive of the Constitutional Assembly idea proposed by the CCC, saying the NCC is constitutional and legally empowered, but a CA would be outside the constitutional framework. She reiterated that the decree Yushchenko issued to establish the NCC specified the need for expert opinions, including the Venice Commission, so those voices would not go unheard.

16. (C) Stavnichuk said that the timeline of the NCC's work will be clearer once it meets, but they hope to have a draft finished by April or May. Therefore, she could not rule out that a document might be ready for referendum on June 28, Constitution Day. (Note. This is the target date that a number of NGO leaders have cited to us. End note.) She added that they already had a draft document that the NCC could begin to consider. It envisioned a careful balance of

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power between the President, Cabinet, and Rada. Beyond that, she refused to divulge any details of the President's constitutional draft, saying it was his prerogative to announce the details. Regions also had a project, Stavnichuk said, but Yanukovych had already told Yushchenko that he was ready to compromise. The actual drafting from this point forward would be done by a working group made up of constitutional experts, constitutional court judges, academics, representatives of the Justice Ministry, and maybe someone from the Rada.

Justice Ministry on Board with Reform

17. (C) At a February 1 meeting, in response to the Ambassador's question about whether the administration wanted a new constitution or to amend the old one, Justice Minister Onishchuk said there was an obvious need for a new constitution. He said approximately 65-70 percent of the text will be updated from the current document. Onishchuk said that he would insist that the new constitution be adopted by the Rada, as specified in the current constitution. (Note. The current constitution only refers to amending the current document, not to adopting a new one. End note.) He also believed the Rada decision should then be endorsed by a national referendum. He said he could not predict what would happen if the Rada rejected the new constitution.

18. (C) Onishchuk said that there were several objective reasons in favor of a new constitution. Local self-government reform and decentralization of power was needed. In addition, there needed to be administrative reform and reform of the executive branch to unite the executive branch. There should be only two centers of power -- the government and the citizenry, with regional administration the weakest level. Onishchuk proposed enhancing the power of the President as "guarantor of power",

but to weaken his administrative role. For example, the Minister said, it would be beneficial to increase the President's role in appointing and dismissing judges, make him head of the High Council of Justice, and specify the President has right to terminate the Cabinet only in event of threat to national security. However, in terms of administrative control (which is what Ukrainian leaders always want), the President should not be so protected. For example, a government that is formed with the President's participation creates two channels of control over the government -- this needs to be consolidated. The President would lose his role here, but he would gain power as guarantor of the constitution. Onishchuk said that he was certain that most Ukrainian politicians already understand this and he planned to try to convince President of this. Finally, he said the question of a unicameral or bicameral legislature (which Regions keeps raising) will simply be a matter of political expediency.

19. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
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